



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0292]

RIN 1625-AA00

Safety Zone for Ice Conditions; Chesapeake and Delaware Canal, Upper Chesapeake Bay, and Tributaries, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in all navigable waters within the northern portion of the Chesapeake Bay and its tributaries, including the western portion of the Chesapeake and Delaware Canal, located between the Delaware/Maryland Boundary Line across the Chesapeake and Delaware Canal east of Chesapeake City, MD, and a line drawn across the Chesapeake Bay at the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point and Kent Island, MD. The temporary safety zone restricts vessels from transiting the zone during the effective period, unless authorized by the Captain of the Port Baltimore or his

designated representative. This safety zone is necessary to protect mariners from the hazards associated with ice in the navigable waterways.

DATES: This rule is effective without actual notice from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until April 15, 2015. For the purposes of enforcement, actual notice will be used from the date the rule was signed, February 17, 2015 until **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2014-0292. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl

Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to public interest to delay issuing this rule. Delaying the rule by first publishing an NPRM would be contrary to the public interest in the safety zone's intended objective to protect persons and vessels against the hazards associated with ice on navigable waters. Such hazards include vessels

becoming beset or dragged off course, sinking or grounding, and creating hazards to navigation.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register

B. Basis, Purpose, and Discussion.

The legal basis for this rule is provided by 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. The purpose of this rule is to protect personal and vessel safety against dangers posed by frozen waterways.

During an average or severe winter, frozen waterways present numerous hazards to vessels. Ice in a waterway may hamper a vessel's ability to maneuver, and could cause visual aids to navigation to be submerged, destroyed or moved off station. Ice abrasions and ice pressure could also compromise a vessel's watertight integrity, and non-steel hulled vessels would be exposed to a greater risk of hull breach.

When ice conditions develop to a point where vessel operations become unsafe, it becomes necessary to impose operating restrictions to ensure the safe navigation of vessels. A safety zone is a tool available to the Captain of the Port

(COTP) to restrict and manage vessel movement when hazardous conditions exist. The COTP Baltimore is establishing a safety zone within all navigable waters within the northern portion of the Chesapeake Bay and its tributaries, including the western portion of the Chesapeake and Delaware Canal, located between the Delaware/Maryland Boundary Line across the Chesapeake and Delaware Canal east of Chesapeake City, MD, and a line drawn across the Chesapeake Bay at the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point and Kent Island,, MD. This safety zone will restrict certain vessels meeting certain conditions specified from entering the navigable waters within the northern portion of the Chesapeake Bay and its tributaries, including the western portion of the Chesapeake and Delaware Canal, located between the Delaware/Maryland Boundary Line across the Chesapeake and Delaware Canal east of Chesapeake City, MD, and a line drawn across the Chesapeake Bay at the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point and Kent Island, MD. Those vessels prohibited from entering the safety zone will be specified via broadcast notice to mariners and marine safety information bulletins.

Ice generally begins to form in the Upper Chesapeake Bay and its tributaries, including the C & D Canal, in late December or early January. During an average or severe winter, ice in

navigable waters can become a serious problem, requiring the use of federal, state and private ice breaking resources. The Commander, Coast Guard Sector Baltimore will use his COTP authority to promote vessel safety in ice-congested waters and the continuation of waterborne commerce throughout the cold weather months.

Ice fields in the Upper Chesapeake Bay and its tributaries move with prevailing winds and currents. Heavy ice buildups can occur in the C & D Canal, from Town Point Wharf to Reedy Point. Other areas that are commonly affected by high volumes of ice are within the approaches to Baltimore Harbor, including: the Elk River, Susquehanna River, Patapsco River, and the approaches to Baltimore Harbor. Once ice buildup begins it can affect the transit of large ocean-going vessels. This regulation is intended to mitigate the threat ice poses to the maritime public.

C. Discussion of the Interim Rule

A safety zone is being established encompassing navigable waters within the northern portion of the Chesapeake Bay and its tributaries, including the western portion of the Chesapeake and Delaware Canal, located between the Delaware/Maryland Boundary Line across the Chesapeake and Delaware Canal east of Chesapeake City, MD, and a line drawn across the Chesapeake Bay at the William P. Lane, Jr. (US-50/301) Memorial Bridges, located

between Sandy Point and Kent Island, MD. The COTP Baltimore anticipates only having to enforce certain parts of the regulated area at certain times. The purpose of this regulation is to promote maritime safety and to protect mariners transiting the area from the potential hazards due to ice conditions that become a threat to navigation. The COTP Baltimore will notify the maritime community, via marine broadcasts, of the location and thickness of the ice as well as the ability of vessels to transit through the safety zone depending on the prevailing ice conditions. Prevailing ice conditions will be categorized as Condition One, Condition Two, or Condition Three.

Ice Condition One is an emergency condition in which ice has largely covered the regulated area. Under these conditions, convoys may be required and restrictions based on shaft horsepower and a vessel's planned transit may be imposed by the COTP on certain vessels seeking to enter the safety zone.

Ice Condition Two is an alert condition in which at least 2 inches of ice begins to form in the regulated area. The COTP Baltimore may impose restrictions, including but not limited to, those based on shaft horsepower and hull type restrictions for certain vessels seeking to enter the safety zone.

Ice Condition Three is a readiness condition in which weather conditions are favorable for the formation of ice in the

regulated area. Daily reports for the Coast Guard Stations and commercial vessels are monitored, and no limitations for vessels seeking to enter the zone based on vessel traffic, hull type or shaft horsepower are anticipated.

This rule has been enforced with actual notice since February 17, 2015 and it will be enforced until April 15, 2015, unless sooner terminated by the COTP Baltimore.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation could hinder or prevent traffic from transiting within the northern portion of the Chesapeake Bay and its tributaries, including the western portion of the Chesapeake and Delaware Canal, located between the Delaware/Maryland Boundary Line across the Chesapeake and

Delaware Canal east of Chesapeake City, MD, and a line drawn across the Chesapeake Bay at the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point and Kent Island, MD., the effect of this regulation will not be significant because there is little vessel traffic associated with recreational boating and commercial fishing during the effective period.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate, transit or anchor in the regulated area, from February 17, 2015 until April 15, 2015. This safety zone will not have a significant economic impact on a substantial number of small entities due to a lack of seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period. Although the safety zone will apply to the northern portion of Chesapeake Bay and its tributaries, including the western portion of the Chesapeake and Delaware Canal, located between the

Delaware/Maryland Boundary Line across the Chesapeake and Delaware Canal east of Chesapeake City, MD, and a line drawn across the Chesapeake Bay at the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point and Kent Island,, MD, the COTP Baltimore anticipates only having to enforce certain parts of the regulated area at certain times. Traffic will be allowed to pass through the zone with the permission of the COTP Baltimore. Also, the COTP Baltimore will notify the maritime community, via marine broadcasts, of the location and thickness of the ice, as well as the ability of vessels to transit through the safety zone.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these

actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to

safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule

involves establishing a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0292 to read as follows:

§ 165.T05-0292 Safety Zone for Ice Conditions; Chesapeake and Delaware Canal and Upper Chesapeake Bay, and their tributaries; MD.

(a) Regulated Area. The following area is a safety zone:

The navigable waters within the northern portion of the Chesapeake Bay and its tributaries, including the western portion of the Chesapeake and Delaware Canal, located between the Delaware/Maryland Boundary Line across the Chesapeake and Delaware Canal east of Chesapeake City, MD, and a line drawn across the Chesapeake Bay at the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point and Kent Island, MD.

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05-0292.

(1) All vessels and persons are prohibited from entering into or moving within the safety zone unless they meet the requirements set forth by the Captain of the Port (COTP) Baltimore for the prevailing ice conditions. Requirements for entry during periods when the safety zone is enforced will be described via Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22A (157.1 MHz). Requirements may include, but are not limited to, the use of convoys, restrictions on shaft horsepower, and hull type restrictions, dependent on the prevailing ice conditions and vessel type.

(2) Persons desiring to transit in the safety zone not meeting the requirements established by the COTP Baltimore must contact the COTP Baltimore or his designated representative at

telephone number 410-576-2693 or on VHF-FM channel 16 (156.8 MHZ) to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the COTP Baltimore or his designated representative.

(3) The Coast Guard vessels enforcing this safety zone can be contacted on VHF-FM marine band radio channel 16 (156.8 MHZ). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel operating under the authority of the COTP Baltimore, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The COTP Baltimore and his designated representatives can be contacted at telephone number 410-576-2693.

(4) The COTP Baltimore or his designated representative will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF-FM marine band radio channel 22A (157.1 MHZ).

(c) Definitions. As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be enforced from February 17, 2015 until April 15, 2015.

Dated: February 17, 2015

Kevin C. Kiefer
Captain, U.S. Coast Guard
Captain of the Port Baltimore.
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3/9/2015]